

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**FILASER, INC., a Canadian corporation**  
**registered to do business in Oregon,**

Plaintiff,

v.

**KINESTRAL TECHNOLOGIES, INC., a**  
**Delaware corporation,**

Defendant.

**MOSMAN, J.,**

No. 3:14-cv-00357-MO

ORDER

Both parties agree that the contract in question is to be evaluated under California law. Since there can be no “prevailing party” for a voluntary dismissal under Cal. Civil Code § 1717(b)(2), I DENY Plaintiff’s Motion for Attorney Fees [49].

There is a split of authority concerning whether a prevailing party determination should be made under § 1717(b)(1), when a case is dismissed for lack of jurisdiction. I find the reasoning in *Hsu v. Abbata*, 891 P.2d 804, 813 (Cal. 1995), to be persuasive and therefore decline to distinguish the application of *Hsu* as other courts have done. Until the California

Supreme Court resolves this split, I must DENY Defendant's motion for attorney fees [46]. IT IS SO ORDERED.

DATED this 3rd day of November, 2014.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Judge